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Hope and Betrayal on Death Row

David Cole

Georgetown University Law Center, cole@law.georgetown.edu

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The New York Review of Books

Hope and Betrayal on Death Row

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David Cole

The Autobiography of an Execution

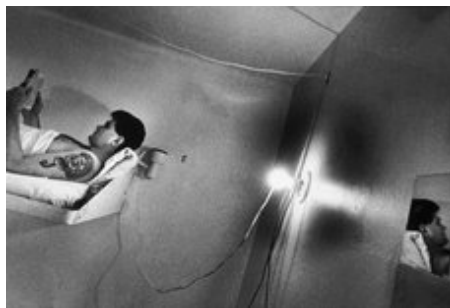
by David R. Dow

Twelve, 273 pp., \$24.99

In the Place of Justice: A Story of Punishment and Deliverance

by Wilbert Rideau

Knopf, 366 pp., \$26.95



Ken Light/Contact Press Images

Cameron Todd Willingham, who was executed in 2004 for allegedly setting a fire that killed his three children, despite evidence that he was wrongly convicted, in his cell on death row, Texas, 1994. Photograph by Ken Light from his book Texas Death Row (University Press of Mississippi, 1995).

1.

David Dow met Henry Quaker when he usually meets convicted murderers—shortly before Quaker’s execution date.¹ Some years earlier, Quaker had been convicted of shooting his wife and two young children at close range with a .22-caliber pistol. For Dow, a veteran death-row lawyer with the Texas Defender Service in Houston, Quaker was just another client, not particularly better or worse than the rest.

As Dow explains it, his job is to stave off execution. It is a victory when his client gets resentenced to life in prison, or even dies of natural causes before being executed. In Texas, which has executed one third of all those put to death in the United States since 1976, victories in death penalty appeals are rare. So Dow is careful not to get his client’s hopes up. As he puts it in *The Autobiography of an Execution*, “I’ve called people who still had hope.

It's easier to tell someone who is prepared to die that he is about to die."

Being a death-row lawyer is hard work. Underpaid and overburdened, death-row attorneys are always racing against time; nothing concentrates the mind like an execution date. The stakes are literally life or death in every case, making it virtually impossible to leave the job behind at the office—much less to take a vacation. The clients are usually guilty of heinous murders, and almost always come from brutally depressed and violent backgrounds. Most defendants facing a death sentence had atrocious lawyers at trial, so the lawyer handling post-conviction appeals is always trying to mop up after his predecessor's errors. And the courts are generally skeptical about such appeals, jaded by the violence of the crimes involved and the repetitiveness of appeal arguments.

But representing death-row inmates is nowhere tougher than in Texas. Consider just one of Dow's stories about the Texas courts. His office was preparing a last-minute appeal on the day of a scheduled execution of a prisoner who was almost certainly retarded, but whose previous lawyer had failed to develop that evidence. (The Supreme Court has ruled that the Constitution bars the execution of mentally retarded defendants.) As Dow and his team were finishing their petition that afternoon, their computer network crashed. The Texas court of appeals clerk's office ordinarily closed at 5:00 PM, and the execution was scheduled for that evening. Dow's colleague called the clerk to say the petition might be delivered a few minutes after 5:00, but that in light of the scheduled execution that evening the petition had to be considered that day. The clerk replied that the office closed at 5:00. Dow's colleague asked the clerk to check with her superior, the presiding judge, given the exceptional circumstances. The clerk did so, and called back to confirm that the court closed at 5:00. When they got the network up and running and printed the requisite copies, it was 5:10. They called the clerk to let her know they were coming. She said the office closed at 5:00. When they arrived and banged on the door, no one answered. Two hours later, their client, who had an IQ in the 50s, was put to death.

Death sentences imposed by state courts are also reviewed by federal courts, through the writ of habeas corpus. The idea is that federal judges, who enjoy life tenure and are insulated from the passions of local politics, will bring both uniformity and reasoned judgment to the process. The federal court of appeals that reviews Texas state convictions, however, the United States Court of Appeals for the Fifth Circuit, is not much more receptive than the state courts. As Dow describes, the Fifth Circuit

upheld a death sentence of a black inmate who was sentenced to death by an all-white jury after prosecutors systematically removed every potential juror of color from serving. It upheld the death sentence of a mentally retarded inmate after his lawyer, who was afflicted by Parkinson's disease, neglected to point out the inmate's IQ score. It upheld the death sentence of an inmate who was probably innocent on the ground that his

lawyers had waited too long to identify the proof of innocence. It upheld the death sentence of an inmate whose lawyer had literally slept through the trial.

So it is little wonder that Dow comes across as a hard-bitten, hard-drinking skeptic, discouraging clients from holding out unrealistic hopes. The mystery is why he does what he does—watching client after client die, struggling to make uninterested courts, parole boards, and governors care about cold-blooded murderers.

Henry Quaker's story is typical in many respects. When he was eight years old, he saw his brother die of a heroin overdose on the floor of the bedroom they shared. He married his high school sweetheart, Dorris, in 1983, a week after they graduated from high school. They had a son, and Henry enlisted in the army. Upon completing his tour of duty, they had a daughter, and Henry became a welder. By most accounts, Henry and Dorris were a loving couple. In 1989, however, while he was working at a chemical plant, a gas explosion measuring over 3.0 on the Richter scale rocked the plant. Henry managed to escape unharmed, but not before witnessing his two best friends burn to death in the fire.

Henry returned to work just one week later, but his coworkers described him as a changed man. He was sullen and withdrawn, almost affectless, and no longer joined his colleagues for a drink after their shift. He separated from Dorris. Three months later, her body, and the bodies of their two children, were found shot to death with a .22-caliber pistol in their house. Police found blood from Henry's son in his truck, and Henry had owned such a gun. A neighbor said that he saw a truck like Henry's parked outside their house the night Dorris and her children were killed. Dorris's brother testified that she had told him Henry had become abusive. And Henry was the beneficiary of a life insurance policy on his wife and children. The jury sentenced him to death after three hours' deliberation.

Quaker's trial lawyer came to court with alcohol on his breath at 8 AM, and fell asleep during the trial. He interviewed no witnesses, put on no evidence, and was unprepared to cross-examine the prosecution's witnesses. During the separate penalty phase of the proceeding, often the most important in death penalty trials, in which a defendant may put forward any evidence that might lead the jury to choose life over death, Quaker's lawyer again called no witnesses and submitted no new evidence. He later said that "he had been expecting an acquittal, so he wasn't prepared for sentencing." He made no closing argument. The judge said it was "the only capital-murder trial she had ever heard of where the defense lawyer did not implore the jury to spare his client from execution."

The judge in Quaker's trial, Jocelyn Truesdale, had been a real estate agent attending night law school when her husband, a police officer, was shot and killed during a traffic stop. The judge hearing the case against her husband's killer threw out crucial evidence because the police had beaten it out of the defendant. The shooter went free, the public was outraged, and in the next election, Truesdale ran against the judge and won by a landslide. Six months after

passing the bar, she became a judge.

By the time Dow was appointed to represent Quaker, there was little that he could do. Quaker's trial lawyer had failed to raise many plausible legal claims, and Quaker's appellate lawyer had failed to argue that the trial lawyer was "ineffective." As a result, most of the legal claims Quaker might have had could no longer be raised. Dow's colleagues convinced him that their only course was to try to raise new questions about Quaker's guilt. Dow thought it hopeless, but seeing no alternative, gave them the go-ahead.

Dow's book reads like a Dashiell Hammett thriller as it reports what the legal team found. Virtually every piece of evidence against Quaker was less persuasive than it first appeared. Quaker's son had regular nosebleeds, thus explaining the traces of blood in his truck. Quaker's insurance agent had raised the question of his buying life insurance when he was insuring his car and strongly suggested that he do so. The prosecutor had put pressure on Dorris's brother, a drug addict, to say that Henry had abused his sister, threatening that otherwise he'd be prosecuted on drug charges.

Most significantly, another death-row inmate, Ezekiel Green, told Dow that he knew Quaker was innocent—because Green himself had ordered the murder. Green had been dealing drugs, and a woman selling for him had been pocketing the profits. He hired a man named Ruben Cantu to kill her. Dorris Quaker lived exactly two blocks from the woman Cantu was supposed to kill. Cantu went to the wrong house.

Such stories from death-row inmates are often dismissed as unreliable, efforts by people who are going to die anyway to aggrandize themselves or to help out another death-row prisoner. But Dow and his team managed to locate Cantu, and to determine that the last three numbers of Cantu's license plate matched those that Quaker's neighbor recalled from the truck he saw parked near the Quakers' house the night of the murder. Cantu disappeared immediately after Dow visited him to ask about the murder, but not before inadvertently confirming that the police had interviewed him during the murder investigation. And Green and Quaker both passed lie detector tests.

Dow and his colleagues presented all of this information in a hearing before Judge Truesdale, who admitted to Dow out of court that she harbored real doubts about Quaker's guilt. In an "only-in-Texas" twist, before ruling on Dow's petition, Truesdale asked him to meet her at a downtown hotel bar and then invited him to her room for the night. A married man, Dow declined. Nonetheless, at 5:00 on the day Quaker was scheduled to die, Truesdale ordered that Quaker's execution order be withdrawn.

The district attorney appealed an hour later, but made a fundamental error. He asked the appeals court to order the trial judge to issue a new order resetting the execution date for that evening, something beyond the court's power. Before Dow could even respond, the appeals

court rejected the district attorney's request—but in doing so, instructed him on the proper procedure. At 8:00 the district attorney refiled his request to have the execution carried out. Fifteen minutes later, the court of appeals vacated Judge Truesdale's order withdrawing the execution date, which had the effect of restoring the original execution date for later that evening.

Dow and his colleagues filed a last-minute emergency petition with the Supreme Court. The Court denied it, 5–4. Dow rushed to the prison, where Henry told him that he hoped he would now be rejoining Dorris and their children, and that in any event, he didn't want to live anymore without them. At 11:37 that evening, Henry Quaker was put to death.



Wilbert Rideau, who spent twelve years on death row, with Angola State Prison warden C. Paul Phelps. Rideau writes of Phelps: 'He taught me about friendship, civic responsibility, and moral obligation. Phelps turned The Angolite [the prison newspaper that Rideau edited] into the only uncensored prison publication in America because he thought it would help clean up the prison and improve inmate-employee relations—which it did.'

In Quaker's story, eloquently told by Dow, the state's demand for finality wins out over truth. Serious doubts about whether Quaker was in fact guilty are not allowed to interfere with what Justice Harry Blackmun aptly called "the machinery of death." Instead of taking the time to confirm Quaker's guilt in light of the new evidence, the prosecution pressed determinedly ahead—as if the state would suffer some grievous harm if the execution did not happen that very night. And the courts colluded in that effort. When Quaker's previous lawyers failed to raise issues at trial and on appeal that might have undermined the verdict against him, the courts held the lawyers' errors against Quaker, and barred him from even pursuing those claims. But when the district attorney erred in his appeal, the court promptly instructed him on how to correct the error so that the execution could proceed without a hitch. Something is terribly wrong when the drive to meet an execution deadline overwhelms the search for truth.

2.

Unlike Henry Quaker, Wilbert Rideau was unequivocally guilty. At age nineteen, he purchased a gun and knife, and used them the next day to rob a bank. He took two white

female tellers and a white male manager hostage, shot all three by the side of the road, and also stabbed one. The teller he stabbed and shot died. The others survived, and testified at trial that Rideau, a black man, had lined them up and shot them point-blank, execution-style.

Given the time and place of the crime—Calcasieu Parish in rural Louisiana in 1961—Rideau was lucky to get a trial. Historically, a lynching was the preferred method of addressing accusations that a black man had killed a white woman in Louisiana. A mob of some two hundred to three hundred citizens surrounded the jail when Rideau was first arrested. He ultimately received a trial but the result was never much in doubt. The judge appointed two real estate lawyers to defend him, and they conducted no cross-examination and presented no defense. The all-white jury took less than an hour to condemn him to die, and before his twentieth birthday Rideau found himself on death row at Angola State Prison, one of the nation's most violent penitentiaries.

Rideau spent twelve years on death row as his case wended its way through the courts. His death sentence was overturned twice on grounds that the jury had been skewed, but each time he was retried, reconvicted, and resentenced to death. The second jury took only fifteen minutes to vote for death; the third jury took only eight. All three juries were composed exclusively of white men. In 1973, his death sentence was reversed for a third and final time, after the Supreme Court in *Furman v. Georgia* effectively declared all existing death penalty statutes unconstitutional because they afforded too much discretion to juries. Rideau was resentenced to life in prison and transferred to Angola's general prison population.

At the time, a sentence of life in Louisiana did not literally mean life. On average, "lifers" served a little more than ten years, at which point they were freed on parole, assuming a record of good behavior in prison. Rideau compiled an exemplary record behind bars. While on death row, he became a voracious reader and educated himself. Once in the general population, he joined the prison newspaper, *The Angolite*, where he flourished. An enlightened warden, C. Paul Phelps, realized that an uncensored newspaper could be an asset to the prison, and encouraged Rideau to write without censorship.

Rideau wrote groundbreaking stories about life behind bars, tackling such subjects as prison rape, incarceration of the elderly and the disabled, and the electric chair. His journalism received national awards, including the George Polk award, and he appeared on *Nightline*, in PBS documentaries, and on NPR and ABC News. *Life* magazine did a feature on Rideau entitled "The Most Rehabilitated Prisoner in America." The *Angolite* office became "kind of an unofficial ombudsman for the prison," as Rideau used the paper to push for reform of prison conditions, release of old and infirm prisoners, and, more than once, to stave off prison disturbances. As Rideau puts it, "I was having as full a life and as good a time as anyone who is deprived of his freedom and a normal framework for his life could have."

But naturally, what Rideau wanted above all was his freedom. In *In the Place of Justice*, he recounts repeated presentations to the parole board and the governor, yet every time he was turned down. He ultimately served not the usual ten and a half years, not even two or three times that, but nearly forty-four years. In Louisiana, it seems, even the most rehabilitated prisoner in America could not secure release if he was black and had killed a white woman. Rideau observes that of 101 murder convictions in Calcasieu Parish from 1889 to 1976, every black defendant convicted of killing a white person was sentenced to death, while only 23.3 percent of whites who killed whites received that sentence. No black man convicted of killing a white person there had ever been granted clemency and freed.

In the end, Rideau won release only by obtaining yet a fourth trial, this time because authorities had excluded blacks from the grand jury that indicted him. For the fourth trial, unlike the prior three, Rideau had a top-notch legal team, including George Kendall, one of the nation's best capital defense lawyers, then at the NAACP Legal Defense Fund; Johnnie Cochran; veteran Louisiana criminal defense lawyer Julian Murray; and Linda LaBranche, an English professor and Shakespeare scholar who took up Rideau's case after seeing it featured on *Nightline*, and became Rideau's best advocate and ultimately his wife. The team thoroughly reinvestigated the forty-year-old crime; selected a mixed-race jury; and successfully portrayed Rideau's crime not as a cold-blooded murder but as the act of a scared young man whose robbery had gone terribly wrong. He was convicted of manslaughter, not murder, and having already served far more than the maximum sentence for that crime, walked out of court a free man in 2005.

Rideau's book offers a disturbing, richly detailed, and all too rare look at life behind bars. We commit offenders to such places precisely so we will not have to pay attention to them. But Rideau invites us in, showing us that prison is "a world unto itself, with its own peculiar culture, belief system, lifestyle, power structure, economy, and currency." He reports, for example, that slavery is a common feature of prison life, with perhaps one quarter of all Angola's prisoners in bondage, a status introduced through rape and maintained through violence. Slaves, Rideau writes, are sold, traded, used as collateral, and gambled off. That members of the incarcerated world—themselves disproportionately African-American—would reproduce our nation's most shameful practice, and that prison authorities would tolerate it, show how skewed life behind bars can be.

But Rideau's account also portrays a world that surprisingly mirrors our own, involving complicated power relations, functional and dysfunctional bureaucracies, and deep human ties of love and fealty. At the core of his message is the critical importance of hope to human dignity. It is hope that keeps a lid on frustration, rage, and violence in prison. Thus, when Louisiana governors David Treen and Buddy Roemer tightened clemency standards in the 1980s, tension and violence at Angola rose dramatically. Everyone needs hope, none more so than those facing years of potential incarceration. Rideau's own successful rehabilitation may

well have been in part the result of his remarkable ability to sustain hope in the face of all evidence.

3.

Criminal justice policy in the United States today is plagued by the abandonment of hope. For most of the twentieth century, American criminal justice was guided by the concept of rehabilitation. Criminals were seen as persons who could and should be helped to reintegrate into the law-abiding community. Under the best programs, short sentences and liberal probation and parole were combined with access to education and vocational training in prison to help inmates forgo crime and become productive members of the community.

In the 1970s, however, as crime began to rise, the country gave up on rehabilitation. The Republicans developed a “Southern strategy” that exploited fear of crime and racial bias to link the Democrats with African-Americans and criminals while identifying Republicans as committed to “law and order.” These developments led to a forty-year increase in incarceration, as the United States went from a country with per capita incarceration levels that approximated those of West European nations, around one hundred per 100,000, to a country that today leads the world in per capita incarceration, with an incarceration rate that exceeds seven hundred per 100,000. (Over the same period, West European nations have remained around the one hundred mark).

Over much the same period, and in reaction to the Supreme Court’s *Furman v. Georgia* decision, thirty-five states and Congress reintroduced the death penalty. In 1976, the Court backed off from its earlier decision, and ruled that as long as juror discretion was “guided” by consideration of “aggravating” and “mitigating” factors, the death penalty was constitutional. Since then, the Court has erected increasingly complex obstacles to death penalty appeals. Experienced lawyers like Dow have become careful not to give their clients cause for hope, since they will in most circumstances be disappointed.

Both of these books, in their own ways, suggest that we must resurrect hope if we are to reform our criminal justice system. That, in turn, requires empathy. But the politics of crime in the United States has for too long been characterized by exclusion and prejudice, as we wrote off offenders, disproportionately African-American, Latino, or poor, as worthy not of empathy but only of retribution. We have provided little by way of rehabilitative services, leaving prisons to become training grounds for further criminality. And far from assisting released prisoners with reentry, we have greeted them with disenfranchisement and bars to employment, welfare, and public housing.

There is reason to believe, however, that this forty-year tide may be turning, albeit far too slowly. Executions nationwide reached a peak of ninety-eight in 1999, and have dropped fairly consistently since then. In 2009, there were fifty-two. The Supreme Court in recent

years has shown greater willingness to find that lawyers in death penalty cases were so ineffectual that the constitutional rights of defendants were violated. The Court, moreover, has declared the death penalty unconstitutional for juvenile offenders and the mentally retarded.

While the nation's incarceration rate continues to climb, the rate of increase has tapered off. Indeed, in 2009, the US state prison population decreased for the first time in nearly forty years.² Driven by budgetary concerns and a ten-year drop in crime rates, many states have reduced the severity of criminal sentences, especially for property and drug crimes. Some states have substituted treatment for incarceration for nonviolent drug offenders and provided for early release of prisoners likely to pose little danger to society. Parole and probation have been more liberally made available. Many states have reduced or eliminated mandatory minimum sentences.³ In August 2010, Congress repealed a mandatory minimum law for the first time since the Nixon administration. The same law also reduced sentences for possession of crack cocaine, which had been one hundred times more severe than for powder cocaine; the disparity is now 18–1. (Eighty percent of defendants arrested for crack cocaine are black.) At the same time, some states have increased investment in reentry and reintegration programs; they have come to realize that if they do not, many released prisoners will commit crime again and be back in prison within a few years.

Budgetary incentives have been a great motivator in these reforms. But if the reforms are to be truly transformative, economic incentives are not enough. We need to understand and identify with those we have placed behind bars and sentenced to die. Books like Rideau's and Dow's provide a sympathetic glimpse into the world that most Americans have found it convenient to ignore. They simultaneously cast a light on the dark side of our criminal justice policy, illustrate the value of fighting for justice, and, most importantly, insist on the need to sustain hope and faith in our fellow human beings even when they have committed horrible crimes.

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1. In telling Henry Quaker's story, Dow changed his name, as well as the names of other participants, and certain identifying features of the case in order to protect attorney–client privileged information. ↩
 2. Pew Center on the States Public Safety Performance Project, "Prison Count 2010: State Population Declines for the First Time in 38 Years," April 2010. When federal and local prisons are taken into account, the overall numbers of people incarcerated nonetheless increased, but only by 0.2 percent. ↩
 3. See generally Adrienne Austin, *Criminal Justice Trends: Key Legislative Changes in Sentencing Policy, 2001–2010* (Vera Institute for Justice, 2010) and Judith A. Greene,

Smart on Crime: Positive Trends in State-Level Sentencing and Corrections Policy
(Families Against Mandatory Minimums, 2003). ↵